

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

EDWARD EARL THOMAS,

Plaintiff,

v.

Case No. 07-11526  
Honorable Denise Page Hood  
Magistrate Judge R. Steven Whalen

SOCIAL SECURITY ADMINISTRATION,

Defendant.

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**ORDER ADOPTING REPORT AND RECOMMENDATION &  
GRANTING DEFENDANT'S MOTION TO DISMISS**

Before the Court is Magistrate Judge R. Steven Whalen's Report and Recommendation ("R & R") [Docket # 11], which recommends that Defendants' Motion to Dismiss [Docket # 5] be granted. Plaintiff<sup>1</sup> filed an Objection to the R & R.

If a party objects to specific portions of the R & R, a district court should "make a de novo determination of those portions." 28 U.S.C. § 636. If an R & R is not objected to, a district court need not review it by any standard. *See* 28 U.S.C. § 636; *see also Lardie v. Birkett*, 221 F. Supp.

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<sup>1</sup>Michigan Department of Corrections ("MDOC") records indicate that Plaintiff was released from MDOC custody on November 1, 2001 for time served pursuant to a narcotics conviction. However, MDOC records also indicate that Petitioner is currently under MDOC supervision pursuant to a separate conviction. He was paroled on March 12, 2007 on the conviction for felonious assault and malicious destruction of personal property. It appears that his status as a MDOC parolee will cease on March 12, 2012.

2d 806, 807 (E.D. Mich. 2002). A district court “may accept, reject or modify, in whole or in part, the findings or recommendations made by the magistrate.” 28 U.S.C. § 636(B)(1).

Plaintiff’s Complaint appears to allege that Plaintiff is entitled to “backpay” for social security benefits. Plaintiff alleges that he was receiving benefits at one point in time, but that those benefits were terminated.<sup>2</sup> Plaintiff does not attach dates to his allegations, and does not provide proof that he ever received social security benefits. Plaintiff’s Objection to the R & R appears to set forth the same allegations.

The R&R recommends dismissal of the Complaint pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), because: 1) this Court currently lacks jurisdiction to review the alleged decision by the Commissioner to terminate Plaintiff’s social security benefits; 2) Plaintiff’s allegations against Defendant are unclear; and 3) Plaintiff’s basis for making a claim for “backpay” is unclear. The Court has reviewed the R & R and agrees with its reasoning and conclusions of law despite Plaintiff’s objections.

This Court lacks jurisdiction to review social security determinations if a claimant has failed to exhaust his administrative remedies and present any issues to the Social Security Commissioner. 42 U.S.C. § 405(h); *Bowen v. City of New York*, 476 U.S. 467, 483 (1986). Here, Plaintiff has failed

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<sup>2</sup>The Court notes that a claimant’s social security benefits are typically suspended if the claimant is confined in prison after being convicted of a felony, unless the claimant is participating in a court-approved rehabilitation program. *Sheffield v. Secretary of Health and Human Servs.*, 1992 WL 366061, at \*1 (6th Cir. Dec. 11, 1992) (citing 42 U.S.C. § 402(x) and 20 C.F.R. § 404.468(a)).

to do either. Accordingly, this Court lacks jurisdiction to hear his claim.

Plaintiff's claims are also subject to dismissal pursuant to Rule 12(b)(6), because they fail to state a claim upon which relief could be granted. Plaintiff's Complaint and Objection to the R & R do not provide a basis for Plaintiff's claims. Accordingly, Plaintiff has failed to state a claim upon which relief can be granted.

In light of the foregoing,

IT IS ORDERED that the Report and Recommendation of Magistrate Judge R. Steven Whalen is **ACCEPTED** and **ADOPTED** as this Court's findings and conclusions of law.

IT IS FURTHER ORDERED that Defendants' Motion to Dismiss [Docket # 5] is **GRANTED**.

IT IS FURTHER ORDERED that Plaintiff's Complaint is **DISMISSED WITHOUT PREJUDICE**.

S/Denise Page Hood  
Denise Page Hood  
United States District Judge

Dated: May 30, 2008

I hereby certify that a copy of the foregoing document was served upon counsel of record on May 30, 2008, by electronic and/or ordinary mail.

S/William F. Lewis  
Case Manager